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OFFICE OF PETITIONS

In re Application of
Pierce
Application No. 10/727,914
Filed: December 4, 2003
Attorney Docket No. 1434-004
For: CELERY NAMED ADS-3

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: DECISION GRANTING
: PETITION
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This is a decision on the petition entitled, "RESPONSE TO NOTICE OF INCOMPLETE APPLICATION", filed May 17, 2004, requesting in effect, withdrawal of the Notice of Incomplete Nonprovisional Application, mailed May 3, 2004, and accordation of a December 4, 2003 filing date to the above-identified application.

The application was deposited on December 4, 2003. On May 3, 2004, the Office of Initial Patent Examination mailed a Notice informing petitioner that no filing date had been accorded to the application papers deposited on December 4, 2003 because no drawing was present, as is required by 35 USC 113.

In response to the Notice, petitioner timely filed the present petition in which petitioner argues that drawings are not necessary for the understanding of the invention.

It is noted that the above-identified application contains multiple method claims. As stated in MPEP 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence.)

MPEP 601.01(f) also states that:

... [A] nonprovisional application having at least one claim ... directed to a subject matter ... for which a drawing is usually not considered essential for a filing date, not describing drawing figures in the specification, and filed without drawings will simply be processed for examination, so long as the application contains something that can be construed as a written description.

This nonprovisional application contains method claims and a detailed written description. Therefore, the application should have been accorded a filing date.

In view of the above, the "Notice" mailed May 3, 2004 was mailed in error and is hereby withdrawn. The petition is **granted**. No petition fee has been or will be charged in connection with this matter.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of **December 4, 2003**.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6712. After September 30, 2004, please call (571) 272-3230.

A handwritten signature in cursive script, reading "E. Shirene Willis".

E. Shirene Willis
Senior Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy